

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Caribbean Network Solutions, Inc.)	EB-FIELDSCR-18-00027564
Bayamon, Puerto Rico)	NAL/Acct. No. 201932020001
)	FRN: 0028316164
)	

FORFEITURE ORDER

Adopted: November 14, 2019

Released: November 14, 2019

By the Acting Field Director, Enforcement Bureau:

I. INTRODUCTION

1. The Federal Aviation Administration (FAA) uses terminal doppler weather radar stations to detect wind shear and other dangerous weather conditions near airports. Interference to these radar stations is unacceptable and, in certain circumstances, could be potentially life threatening. The Enforcement Bureau (Bureau) previously found Caribbean Network Solutions, Inc.,¹ (Caribbean) operated two Unlicensed National Information Infrastructure (U-NII) devices without a license, in a manner inconsistent with the Commission's rules, and in a manner that caused interference to an FAA terminal doppler weather radar station in San Juan, Puerto Rico, and proposed a \$20,000 fine for those apparent statutory and regulatory violations. Caribbean does not dispute the Bureau's findings, but instead requests the cancellation or reduction of the proposed fine. After reviewing Caribbean's financial condition, we find that reducing the forfeiture to \$7,912 is appropriate in this matter.

II. BACKGROUND

2. On May 20, 2019, the Bureau issued a *Notice of Apparent Liability for Forfeiture and Order (Notice)*² against Caribbean proposing a \$20,000 forfeiture for apparent violations of section 301 of the Communications Act of 1934, as amended (Act),³ and sections 15.1(b) and 15.407(h)(2) of the Commission's rules.⁴ Section 301 of the Act states that "[n]o person shall use or operate any apparatus for the transmission of energy or communications or signals by radio" within the United States or its territories without a license granted by the Commission.⁵ Part 15 of the Commission's rules provides an exception to this general section 301 license requirement and sets forth conditions under which such

¹ Any entity that is a "Small Business Concern" as defined in the Small Business Act (Pub. L. 85-536, as amended) may avail itself of rights set forth in that Act, including rights set forth in 15 U.S.C. § 657, "Oversight of Regulatory Enforcement," in addition to other rights set forth herein.

² The *Notice* includes a more complete discussion of the facts and history of this case and is incorporated herein by reference. See *Caribbean Network Solutions, Inc., Bayamon, Puerto Rico*, Notice of Apparent Liability for Forfeiture and Order, 34 FCC Rcd 3643 (EB 2019), at https://docs.fcc.gov/public/attachments/DA-19-433A1_Rcd.pdf.

³ 47 U.S.C. § 301.

⁴ 47 CFR §§ 15.1(b), 15.407(h)(2).

⁵ 47 U.S.C. § 301.

devices (intentional radiators) may operate without an individual license.⁶ Pursuant to section 15.1(b) of the Commission's rules, however, "operation of an intentional . . . radiator that is *not* in accordance with the regulations in this part *must be licensed*. . . ."⁷ In order to avoid interference to the FAA's terminal doppler weather radar installations, the Commission requires, pursuant to section 15.407(h)(2) of its rules, that Unlicensed National Information Infrastructure devices operating in the 5.25 – 5.35 GHz (U-NII-2A) and 5.47 – 5.725 GHz (U-NII-2C) bands have Dynamic Frequency Selection radar detection functionality, which allows them to detect the presence of radar systems and automatically avoid operating on the same channel as those nearby radar systems.⁸ In the *Notice*, the Bureau stated that its agent observed that Caribbean had configured its two U-NII devices in a manner that disabled Dynamic Frequency Selection.

3. On June 18, 2019, Caribbean filed a response to the *Notice*.⁹ Caribbean does not dispute that it operated two U-NII devices in a manner that violates section 301 of the Act and sections 15.1(b) and 15.407(h)(2). Instead, Caribbean seeks a cancellation or reduction of the forfeiture proposed in the *Notice* based on its lack of awareness that it was causing interference to the FAA's terminal doppler weather radar station, its steps to remedy the interference after receiving notice, its overall history of compliance with the Commission's rules, and its inability to pay the proposed forfeiture.¹⁰

III. DISCUSSION

4. The Bureau proposed a forfeiture in this case in accordance with section 503(b) of the Act,¹¹ section 1.80 of the Commission's rules,¹² and the Commission's *Forfeiture Policy Statement*.¹³ When we assess forfeitures, section 503(b)(2)(E) requires that we take into account the "nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."¹⁴ We have fully considered the Response and find that a reduction of the forfeiture is warranted based on Caribbean's inability to pay the \$20,000 forfeiture proposed in the *Notice*.

5. As an initial matter, we note that Caribbean advanced three additional arguments to support its request for the cancellation or reduction of the forfeiture proposed in the *Notice*: its lack of awareness that it was causing interference to the FAA's terminal doppler weather radar station, the remedial actions it took to remedy the interference after receiving notice, and its history of compliance with the Commission's rules. We are not persuaded by these arguments. The Commission has long held that "lack of knowledge regarding, or intent to violate, the Commission's requirements does not exonerate, excuse or mitigate past violations and is not a defense to forfeiture penalties."¹⁵ The

⁶ See 47 CFR §§ 15.1, *et seq.*

⁷ 47 CFR § 15.1(b) (emphasis added).

⁸ See 47 CFR § 15.407(h)(2).

⁹ Caribbean Network Solutions, Inc., Response to Notice of Apparent Liability for Forfeiture and Order (June 18, 2019) (on file in EB-FIELDSCR-18-00027564) (Response).

¹⁰ Response at 4-5.

¹¹ 47 U.S.C. § 503(b).

¹² 47 CFR § 1.80.

¹³ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997) (*Forfeiture Policy Statement*), *recons. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

¹⁴ 47 U.S.C. § 503(b)(2)(E).

¹⁵ See, e.g., *San Jose Navigation, Inc.*, Forfeiture Order, 22 FCC Rcd 1040, 1042, para. 9 (2007) (stating that "lack of knowledge regarding, or intent to violate, the Commission's requirements does not exonerate, excuse or mitigate
(continued....)

Commission has held that remedial action taken in response to Commission enforcement action is not a reason to reduce a forfeiture.¹⁶ Likewise, we do not credit a history of regulatory compliance, given Caribbean's admitted unfamiliarity with the Commission's rules.

6. We are, however, persuaded by the argument in the Response (and accompanying documentation) that Caribbean lacks the ability to pay the full \$20,000 forfeiture in the *Notice*. The Commission has previously determined that, in general, gross income or revenues are the best indicators of an entity's ability to pay a forfeiture.¹⁷ Based on the financial documentation provided in the Response, we find that Caribbean's average gross income over its past three fiscal years supports a reduction of the forfeiture to \$7,912.

7. A party's ability to pay is only one factor in our forfeiture calculation analysis, and is not dispositive.¹⁸ Indeed, the Commission has previously rejected inability to pay claims in cases of repeated intentional and malicious acts or otherwise egregious violations.¹⁹ We therefore warn Caribbean that we may impose significantly higher penalties—regardless of its financial circumstances—if the forfeiture imposed here does not serve as a sufficient deterrent or if future violations evidence a pattern of deliberate disregard for the Act or the Commission's rules.

IV. CONCLUSION

8. Based on the record before us, and in light of the applicable statutory factors, we conclude that Caribbean willfully violated section 301 of the Act and sections 15.1(b) and 15.407(h)(2) of the Commission's rules. We further find, after consideration of the entire record, including Caribbean's Response and supporting documentation, that a reduction of the forfeiture amount to \$7,912 is appropriate based on Caribbean's ability to pay.

V. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Act,²⁰ and section 1.80 of the Commission's rules,²¹ Caribbean Network Solutions, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of Seven Thousand, Nine Hundred Twelve Dollars (\$7,912) for willfully violating section 301 of the Act and sections 15.1(b) and 15.407(h)(2) of the the Commission's rules.²²

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past violations and is not a defense to forfeiture penalties") citing *Profit Enterprises, Inc.*, Forfeiture Order, 8 FCC Rcd 2846 (1993), *cancelled on other grounds*, 12 FCC Rcd 14999 (1997).

¹⁶ See, e.g., *Radio X Broad. Corp. Bayamon, Puerto Rico*, Memorandum Opinion and Order, 21 FCC Rcd 12209, 12216, para. 15 (2006) (finding that "remedial actions taken to correct a violation after notice by the agency are not mitigating factors warranting the reduction of a forfeiture").

¹⁷ See, e.g., *Coleman Enterprises, Inc., d/b/a Local Long Distance, Inc.*, Order of Forfeiture, 15 FCC Rcd 24385, 24389, para. 11 (2000) (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator's gross revenues); *Jean Yves Tullias*, Forfeiture Order, 33 FCC Rcd 7680, 7681, para. 4 (EB 2017) (following *Coleman Enterprises*).

¹⁸ See 47 U.S.C. § 503(b)(2)(E).

¹⁹ See, e.g., *Ocean Adrian Hinson, Surry County, North Carolina*, Forfeiture Order, 34 FCC Rcd 7619, 7621, paras. 8-9 (2019) (declining to reduce a forfeiture based on a documented inability to pay because the individual "provide[d] no evidence to refute that his conduct was egregious").

²⁰ 47 U.S.C. § 503(b).

²¹ 47 CFR § 1.80.

²² 47 U.S.C. § 301; 47 CFR §§ 15.1(b), 15.407(h)(2).

10. Payment of the forfeiture shall be made in the manner provided for in section 1.80 of the Commission's rules within thirty (30) calendar days after the release of this Forfeiture Order.²³ Caribbean Network Solutions, Inc. shall send electronic notification of payment to matthew.gibson@fcc.gov and field@fcc.gov on the date said payment is made. If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to section 504(a) of the Act.²⁴

11. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing House) debit from a bank account using the Commission's Fee Filer (the Commission's online payment system),²⁵ or by wire transfer. The Commission no longer accepts forfeiture payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:²⁶

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. A completed Form 159 must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 may result in payment not being recognized as having been received. When completing FCC Form 159, enter the Account Number in block number 23A (call sign/other ID), enter the letters "FORF" in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN). For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.
- Payment by credit card must be made by using the Commission's Fee Filer website at <https://apps.fcc.gov/FeeFiler/login.cfm>. To pay by credit card, log-in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Pay bills" on the Fee Filer Menu, and select the bill number associated with the NAL Account – the bill number is the NAL Account number with the first two digits excluded – and then choose the "Pay by Credit Card" option. Please note that there is a \$24,999.99 limit on credit card transactions.
- Payment by ACH must be made by using the Commission's Fee Filer website at <https://apps.fcc.gov/FeeFiler/login.cfm>. To pay by ACH, log in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Pay bills" on the Fee Filer Menu and then select the bill number associated to the NAL Account – the bill number is the NAL Account number with the first two digits excluded – and choose the "Pay from Bank Account" option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

12. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer – Financial Operations, Federal Communications Commission, 445 12th Street, SW, Room 1-A625, Washington, DC 20554.²⁷ Questions regarding payment procedures should be

²³ 47 CFR § 1.80.

²⁴ 47 U.S.C. § 504(a).

²⁵ Payments made using the Commission's Fee Filer system do not require the submission of an FCC Form 159.

²⁶ For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6), or by e-mail at ARINQUIRIES@fcc.gov.

²⁷ See 47 CFR § 1.1914.

directed to the Financial Operations Group Help Desk by telephone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

13. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order shall be sent by first class mail and certified mail, return receipt requested, to Gil Álvarez, President, Caribbean Network Solutions, Inc., Condominio Vistas del Pinar, Apt. 6404, Toa Alta, Puerto Rico 00953.

FEDERAL COMMUNICATIONS COMMISSION

Ronald Ramage
Acting Field Director
Enforcement Bureau